

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**In re: FRANCISCO J. AYALA
PATRICIA AYALA**

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§

**Case No. 07-38405-H5-13
Chapter 13**

MOTION FOR RELIEF FROM THE STAY REGARDING EXEMPT PROPERTY

(1007 Ruell Street, Houston, TX 77017)

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF YOU OBJECT TO THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY, YOU SHOULD CONTACT THE MOVANT IMMEDIATELY TO TRY TO REACH AN AGREEMENT. IF YOU CANNOT REACH AN AGREEMENT, YOU MUST FILE A WRITTEN RESPONSE AND SEND A COPY TO MOVANT NO LATER THAN FIVE (5) BUSINESS DAYS PRIOR TO THE HEARING AND YOU MUST ATTEND THE HEARING.

THE COPY SENT TO THE MOVANT MUST BE DELIVERED BY HAND OR ELECTRONIC DELIVERY IF IT IS SENT LESS THAN FIVE BUSINESS DAYS PRIOR TO THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE HEARING MAY BE AN EVIDENTIARY HEARING AND THE COURT MAY GRANT OR DENY RELIEF FROM THE STAY BASED ON THE EVIDENCE PRESENTED AT THIS HEARING. IF A TIMELY OBJECTION IS FILED, THE COURT WILL CONDUCT A HEARING ON THIS MOTION ON OCTOBER 28, 2009 AT 9 A.M. IN COURTROOM 403 OF THE UNITED STATES COURT HOUSE LOCATED AT 515 RUSK AVENUE. HOUSTON. TEXAS 77012.

1. This motion requests an order from the Bankruptcy Court authorizing the person filing this motion to foreclose on or to repossess the property that is identified in paragraph 3.
2. Movant: Gill Prescott and Peggy McCall Prescott
3. Movant, directly or as agent for the holder, holds a security interest in one (1) 1007 Ruell Street, Houston, TX 77017 more particularly described as:

LOT 14, IN BLOCK 28 OF OAK MEADOWS ADDITION, AN ADDITION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 36, PAGE 39 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.
4. Movant has review the schedules filed in this case. The property described in paragraph 3 is claimed as exempt by the Debtors. Movant does not contest the claimed exemption.
5. Type of collateral (e.g., Home, Manufactured Home, Car, Truck, Motorcycle): home (not principle residence).
6. Debtors' scheduled value of property: \$85,980.00.
7. Movant's estimated value of property: \$85,980.00.
8. Total amount owed to Movant: \$72,321.05.
9. Estimated equity (paragraph 7 minus paragraph 8): \$13,658.95.
10. Total pre and post-petition arrearages: \$3,903.80.
11. Total post-petition arrearages: \$3,903.80.
12. Amount of unpaid, past due property taxes, if applicable: n/a
13. Expiration date on insurance policy, if applicable: n/a.

14. X Movant seeks relief based on the Debtors' failure to make payments. Debtors' payment history is attached as exhibit "A." Movant represents that the attached payment history is a current payment history reflecting all payments, advances, charges and credits from the beginning of the loan. Movant further represents that the payment the payment history is self explanatory or can be interpreted by application of coding information that is also attached. Movant acknowledges that the Court may prohibit the use of parol evidence to interpret a payment history that does not satisfy these representations.
15. _____ Movant seeks relief based on the Debtors' failure to provide a certificate of insurance reflecting insurance coverage as required under the Debtors' pre-petition contracts.
16. If applicable: Name of Co-Debtor: n/a.
17. Based on the foregoing, Movant seeks termination of the automatic stay to allow Movant to foreclose or repossess the Debtors' property and seeks to recover its costs and attorneys' fees in an amount not to exceed the amount listed in paragraph 9.
18. Movant certifies that prior to filing this motion an attempt was made by Billy G. Baca to confer with the Debtors' counsel by telephone on October 1, 2009 at 12:51 p.m. and was advised that the Debtors will not oppose Movant's Motion. An agreement could not be reached in writing. If requested by Debtors or Debtors' counsel, a payment history in the form attached to this motion was provided at least two business days before this motion was filed. The contact person for this motion is Billy G. Baca who may be reached at (713) 864-8000.

Date: October 1, 2009

/s/ Billy G. Baca
Movant's counsel signature
BILLY G. BACA
State Bar No. 01486800
S.D. Tex. Bar No. 3719
5225 Katy Freeway, Suite 350
Houston, Texas 77007
(713) 864-8000 (713) 864-0179 facsimile
BGBaca@LBandD.com

Certificate of Service and Certificate of Compliance with BLR 4001

A copy of this motion was served on the persons shown on the attached "Service Exhibit" at the addresses reflected on that exhibit on October 1, 2009 by prepaid United States first class mail. Movant certifies that Movant has complied with Bankruptcy Local Rule 4001.

/s/ Billy G. Baca
Movant's counsel

SERVICE EXHIBIT

Eloise A Guzman
Guzman Law Firm
8225 Gulf Freeway
Houston, TX 77017

Francisco J. Ayala
7802 Albatross Road
Baytown, TX 77520

Patricia Ayala
7802 Albatross Road
Baytown, TX 77520

William E. Heitkamp
Office of Chapter 13 Trustee
9821 Katy Freeway Ste 590
Houston, TX 77024

US Trustee
Office of the US Trustee
515 Rusk Ave Ste 3516
Houston, TX 77002

IRS (Chapter 13 Notice)
Centralized Insolvency Operations
PO Box 21126
Philadelphia, PA 19114-1294

Franklin Credit Management Corporation Main Office
c/o Rosicki, Rosicki & Associates, P.C.
Outsource Management
51 East Bethpage Road
Plainview, NY 11803

ECMC
7325 Beaufont Springs Suite 200
Richmond, VA 23225

Mary A Daffin
Barrett Burke Daffin Frappier Turner & E
1900 St James Pl Ste 500
Houston, TX 77056

2009 Payments

	Payment due	Payment	Date Paid	Late fee	Principle & Interest	Escrow
1.	1/11/09	\$1900.00	1/2/09	0	\$1024.00	\$476.00
2.	2/11/09	0		\$25.60	0	0
3.	3/11/09	\$750.00	3/11/09	0	\$512.00	\$238.00
4.	4/11/09	\$750.00	4/10/09	0	\$512.00	\$238.00
5.	5/11/09	0		\$25.60	0	0
6.	6/11/09	0		\$25.60	0	0
7.	7/11/09	0		\$25.60	0	0
8.	8/11/09	0		\$25.60	0	0
9.	9/11/09	0		\$25.60	0	0
10.	10/11/09					
11.	11/11/09					
12.	12/12/09					
	Totals	\$3400.00		\$153.80	\$2048.00	\$952.00

EXHIBIT A

2008 Payments

	Payment due	Payment	Date Paid	Late fee	Principle & Interest	Escrow
1.	1/11/08	\$750	1/18/08	0	\$512.00	\$238.00
2.	2/11/08	\$750	2/8/08	0	\$512.00	\$238.00
3.	3/11/08	\$750	3/9/08	0	\$512.00	\$238.00
4.	4/11/08	\$750	4/15/08	0	\$512.00	\$238.00
5.	5/11/08	0		\$25.60	0	0
6.	6/11/08	\$1500	6/12/08	0	\$1024.00	\$476.00
7.	7/11/08	\$750	7/18/08	0	\$512.00	\$238.00
8.	8/11/08	0		\$25.60		
9.	9/11/08	\$750	7/24/08	\$25.60	\$512.00	\$238.00
10.	10/11/08	0		\$25.60		
11.	11/11/08	0		\$25.60		
12.	12/11/08	\$1100	12/29/08	\$25.60	\$1024.00	\$76.00
	Totals	\$7100		\$179.20	\$5120.00	\$1980.00

Amount Owed: \$9000.00 + Late Charges \$170.20 Escrow Pd \$1980.00

Amount Pd. \$2208.35 (Taxes & Insurance)

\$1980.00 Escrow Pd.

Amount Shortage \$ 228.35

2007 Payments

	Payment due	Payment	Date Paid	Late Fee	Principle & Interest	Escrow
1.	1/11/07	\$750	1/15/07	0	\$512.00	\$238.00
2.	2/11/07	\$555	2/9/07	\$25.60	\$512.00	\$238.00
3.	3/11/07	\$650	3/6/07	\$25.60	\$512.00	0
4.	4/11/07	\$750	4/20/07	0	\$512.00	\$238.00
5.	5/11/07	\$750	5/21/07	0	\$512.00	\$238.00
6.	6/11/07	\$750	6/20/07	0	\$512.00	\$238.00
7.	7/11/07	\$750	7/21/07	0	\$512.00	\$238.00
8.	8/11/07	0		\$25.60	0	0
9.	9/11/07	\$750	9/7/07	0	\$512.00	\$238.00
10.	10/11/07	\$1000	10/15/07	0	\$762.00	\$238.00
11.	11/11/07	\$750	11/20/07	0	\$512.00	0
12.	12/11/07	\$750	1/7/08	\$25.60	\$512.00	\$238.00
	Totals	\$8205		\$102.40	\$5882.00	\$2142.00

Amount Owed: \$9000 + Late Charges \$102.40 Escrow Pd \$2142.00

Amount Pd. \$2211.00 (Taxes & Insurance)

\$2142.00 Escrow Pd.

Amount Overage \$ 69.00

2006 Payments

	Payment due	Payment	Date Paid	Late fee	Principle & Interest	Escrow
1.	1/11/06	\$750	1/29/06	\$25.60	\$512.00	\$238.00
2.	2/11/06	\$750	2/25/06	\$25.60	\$512.00	\$238.00
3.	3/11/06	\$750	3/7/06	0	\$512.00	\$238.00
4.	4/11/06	\$750	4/22/06	\$25.60	\$512.00	\$238.00
5.	5/11/06	\$750	5/13/06	0	\$512.00	\$238.00
6.	6/11/06	\$750	6/15/06	0	\$512.00	\$238.00
7.	7/11/06	\$750	7/20/06	0	\$512.00	\$238.00
8.	8/11/06	\$750	8/20/06	0	\$512.00	\$238.00
9.	9/11/06	\$750	9/10/06	0	\$512.00	\$238.00
10.	10/11/06	\$750	10/20/06	0	\$512.00	\$238.00
11.	11/11/06	\$750	11/21/06	0	\$512.00	\$238.00
12.	12/11/06	\$750	1/7/07	\$25.60	\$512.00	\$238.00
	Totals	\$9000		\$102.40	\$6144.00	\$2856.00

Amount Pd. \$2334.00 (Taxes & Insurance)

\$2856.00 Escrow Pd.

Amount Overage \$ 522.00

2005 Payments

Payment due	Payment	Date Paid	Late fee	Principle & Interest	Escrow
1. 1/11/05	\$750	1/29/05	\$25.60	\$512.00	\$238.00
2. 2/15/05	\$750	2/25/05	\$25.60	\$512.00	\$238.00
3. 3/11/05	\$700 Check	3/25/05	\$25.60	0	0 Check Returned
4. 4/11/05	\$750	4/25/05	\$25.60	\$512.00	\$238.00
5. 5/11/05	\$750	5/20/05	0	\$512.00	\$238.00
6. 6/11/05	\$550	6/22/05	\$25.60	\$512.00	\$ 38.00
7. 7/11/05	\$950	7/22/05	\$25.60	\$512.00	\$438.00
8. 8/11/05	\$750	8/05/05	0	\$512.00	\$238.00
9. 9/11/05	0		\$25.60	0	0
10. 10/11/05	\$750	10/15/05	0		
	\$750	10/21/05	0	\$1024.00	\$476.00
11. 11/11/05	\$750	11/25/05	\$25.60	\$512.00	\$238.00
12. 12/11/05	\$750	12/29/05	\$25.60	\$512.00	\$238.00
Totals	\$8950		\$230.40	\$6144.00	\$2806.00

Amount Pd. \$2366.80 (Taxes & Insurance)

\$2806.00 Escrow Pd.

Amount Overage \$ 439.20

Sales Price: \$77,000.00

30 years @ 7 % Interest

Closed: 2-11-04

1st Payment due 3-11-04

Payments \$ 750.00 includes taxes & insurance

\$512 payment, \$238 taxes/insurance escrow

Late fee: \$25.60

	Payment due	Payment	Date Paid	Late fee	Principle & Interest	Escrow
1.	3/11/04	\$750	3/15/04	0	\$512.00	\$238.00
2.	4/11/04	\$750	4/15/04	0	\$512.00	\$238.00
3.	05/11/04	\$750	5/15/04	0	\$512.00	\$238.00
4.	06/11/04	0	0	\$25.60	0	0
5.	07/11/04	\$700	7/20/04	\$25.60	\$512.00	\$238.00
6.	08/11/04	0	0	\$25.60	0	0
7.	09/11/04	\$500	9/3/04	\$25.60	\$512.00	\$238.00
8.	10/11/04	\$300	10/1/04	\$25.60	\$ 50.00	0
		\$750	10/20/04	\$25.60	\$512.00	\$238.00
9.	11/11/04	\$750	11/23/04	\$25.60	\$512.00	\$238.00
10.	12/11/04	\$750	12/29/04	\$25.60	\$512.00	\$238.00
	Totals	\$6000		\$204.80	\$4146.00	\$1904.00

Amount Owed: \$7500 + Late Charges \$204.80

Escrow Pd \$1904.00

Amount Pd. \$3098.50 (Taxes & Insurance)

1904.00 Escrow Pd.

Amount Short \$1194.50